STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
P.O. BOX 621
HONOLULU, HAWAII 96809

STAFF SUBMITTAL

for the meeting of the
COMMISSION ON WATER RESOURCE MANAGEMENT

July 16, 2008
Honolulu, Hawaii

Application for an After-the-Fact Stream Diversion Works Permit (SDWP.1904.8)
And Amendment of the Interim Instream Flow Standard for
Keanuiomano Stream, Kamuela, Hawaii, TMK: (3) 6-2-011:052

APPLICANT:

Mr. Guido Giacometti
P.O. Box 7121
Kamuela, HI 96743

LANDOWNER:

Same as applicant

SUMMARY OF REQUEST:

Application for an After-the-Fact Stream Diversion Works Permit (SDWP) for a submersible pump to pump approximately 15,000 gallons per day from Keanuiomano Stream when it is flowing, and to amend the Interim Instream Flow Standard for Keanuiomano Stream to reflect the additional pumpage.

LOCATION: Exhibits 1a and 1b.

BACKGROUND:

The applicant purchased his three-acre property which extends to the centerline of Keanuiomano Stream approximately ten years ago from Parker Ranch. According to the applicant, Parker Ranch built several diversion structures in the stream on the applicant's property in the 1950's to provide stock pond water for cattle. The diversion structures were subsequently modified around 1985 when the property was subdivided.

The applicant installed a one-half horsepower submersible pump in a shallow side-area of Keanuiomano Stream and has been diverting water from Keanuiomano Stream when water is flowing in the stream since he purchased the property ten years ago. The pump discharges approximately 1,000 gallons per hour to a 7,000 gallon storage tank by a two-inch pipe. Approximately 15,000 gallons per day are pumped when the stream is flowing, and the water is used to irrigate one-half acre of citrus crops and one acre of windbreak trees.

DESCRIPTION:

The applicant installed a one-half horsepower submersible pump in a shallow side-area of Keanuiomano Stream to pump approximately 15,000 gallons per day when Keanuiomano Stream is flowing. Keanuiomano Stream is an intermittent stream where the applicant observed 103 days of flow in 2007, 140 days in 2006, and 143 days in 2005.

ANALYSIS:

Agency Reviews

The Division of Aquatic Resources (DAR) had previously reviewed and commented that Keanuiomano Stream is a tributary to Waiulaula Stream and provides habitat for native goby fish and three alien fish species. Waiulaula Stream provides habitat for ten macrofauna including fish species, crustacean, dragonflies and damselflies.

Hawaii County Department of Public Works commented that the site is not located in a Special Management Area (SMA), that Keanuiomano Stream is not a designated special flood hazard area, and that a Certification for No-Rise is not required for the irrigation pump placed in the water course.

The State Department of Health Clean Water Branch did not condone the issuance of an after-the-fact permit for the project.

The Historic Preservation Division determined that no historic properties will be affected by the project because residential development and previous grubbing/grading have altered the land.

The Land Division commented that Keanuiomano Stream is privately owned by the abutting property owners on both sides of the stream, and accordingly, no permits are required from the Land Division.

The Department of Hawaiian Home lands (DHHL) noted that there are several DHHL lots in the area that may entitle their beneficiaries to have a preference to and a reserved percentage of the waters and wanted assurances that the use of 15,000 gallons per day plus a 7,000 gallon storage tank is reasonable and beneficial and that it would not impact the rights of other users including Native Hawaiians.

Hawaii County Department of Public Works, Office of Hawaiian Affairs, Engineering, Forestry and Wildlife had no objections to the project.

Hawaii County Planning Department and State Parks commented that the project was not subject to its regulatory permit or authority.

The U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service and University of Hawaii Environmental Center did not submit comments as of the date of preparation of this submittal.

Commission Review

The Commission's database of Registration of Stream Diversion Works and Declaration of Water Use indicated three diversions on Keanuiomano Stream. See Exhibit 1b.

1) Richard Schulze's Registration and Declaration of Water Use for a natural sluice with a gate on Keanuiomano Stream was determined incomplete by the Commission in 1989 because additional information on the location and number of acres being irrigated were required from Mr. Schulze. Mr. Schulze had intended to file Declarations for a group of 11 individuals who used the Ouli auwai system and was supposed to send in a list of names, water use and acreages to the

Commission. However, Mr. Schulze did not send in the required additional information. (TMK: (3) 6-2-007:009)

2) Keith Wallach's Registration and Declaration of Water Use to pump water from Keanuiomano Stream using a 1,150 gallons per minute (gpm) pump for non-potable domestic supply and irrigation of approximately 2.6 acres of nursery, windbreak, and lawn was accepted by the Commission in 1989. (TMK: (3) 6-2-009:004)

3) Erwin Baldwin's Declaration and Registration of Water Use to divert water from Keanuiomano Stream via two six-inch pipes and store in reservoirs to irrigate six acres of citrus, fruit orchard and windbreak trees was accepted by the Commission in 1989. (TMK: (3) 6-2-009:018)

Keanuiomano Stream is a perennial stream upstream from the applicant's property and becomes an intermittent stream downstream from the applicant's property. A U.S. Geological Survey (USGS) gaging station was located approximately 3.6 miles upstream from the applicant's property and recorded the following mean of monthly discharges in cubic feet per second (cfs) for Keanuiomano Stream from November 1963 to September 1972 (Exhibit 5):

Monthly Mean Flows in cfs
(November 1, 1963 to September 30, 1972)

Month	Monthly Mean Flow
January	11
February	11
March	10
April	20
May	8.1
June	4.3
July	12
August	13
September	3.4
October	3.2
November	8.6
December	14

In general, Keanuiomano Stream flows are relatively small except for occasional storm flows. The lowest monthly mean flow is for the month of October at 3.2 cfs (2.08 mgd). The highest monthly mean flow is for the month of April at 20 cfs (13 mgd). Examples of peak discharge flows are given on Exhibit 6 where the maximum discharge for the period of record was 3,540 cfs (2,301 mgd) and the maximum peak discharge for water year October 2006 to September 2007 was 935 cfs (608 mgd).

The applicant's parcel is located adjacent to Keanuiomano Stream and therefore has riparian rights to the stream. Riparian rights are rights, attached to land adjoining natural watercourses, to use the water on the riparian land. The use must be reasonable, and the reasonable use cannot harm the reasonable use of those waters by other riparian landowners. Keanuiomano Stream is not located in a Commission-designated surface water management area.

Hawaii Administrative Rules Chapter 169 provides an administrative process for the Commission to review and approve requests to amend interim instream flow standards. Staff believes that the applicant is entitled to a reasonable amount of water diverted from Keanuiomano Stream based on the applicant's riparian rights to Keanuiomano Stream.

Staff recommends approval of the applicant's petition to amend the interim instream flow standard for Keanuiomano Stream based on the following:

- The applicant has riparian rights to use water from Keanuiomano Stream for any reasonable and beneficial use. The applicant's property is adjacent to Keanuiomano Stream, and his submersible pump is located on his property.
- USGS stream flow measurements taken between 1963 and 1972 indicate a variable stream flow with a low monthly mean flow of 3.2 cfs (2.08 mgd) for the month October and a high monthly mean flow of 20 cfs (13 mgd) for the month of April.
- The applicant's submersible pump will only divert water from Keanuiomano Stream when there is sufficient stream flow that is high enough to reach the intake of the pump.

Permit Violation Review

Hawaii Revised Statutes (HRS) §174C-71(3)(A) states: *"The Commission shall require persons to obtain a permit from the commission prior to undertaking a stream channel alteration; provided that routine streambed and drainageway maintenance activities and maintenance of existing facilities are exempt from obtaining a permit."*

HRS §174C-3 states: *"Channel alteration" means: (1) to obstruct, diminish, destroy, modify, or relocate a stream channel; (2) to change the direction of flow of water in a stream channel; (3) to place any material or structures in a stream channel; and (4) to remove any material or structures from a stream channel.*

HRS §174C-3 states: *"Stream" means any river, creek, slough, or natural watercourse in which water usually flows in a defined bed or channel. It is not essential that the flowing be uniform or uninterrupted. The fact that some parts of the bed or channel have been dredged or improved does not prevent the watercourse from being a stream.*

The applicant installed a one-half horsepower submersible pump in a shallow side-area of Keanuiomano Stream to pump approximately 15,000 gallons per day when Keanuiomano Stream is flowing, without a SDWP from the Commission.

Penalty Policy

Hawaii Revised Statutes (HRS) Section 174C-15, as amended, provides for fines up to $5,000 per day for any violation of any provision of HRS §174C. The Commission adopted an Administrative and Civil Penalty Guideline (G01-01) in 2001 to provide a logical and consistent means to assess penalties and guide the settlement of Commission enforcement cases. The Guideline includes Basic, Gravity, Mitigative, and Duration Components. Gravity and Duration Components can increase the initial minimum penalty while Mitigative Components can decrease the initial minimum penalty.

Basic Components: The minimum fine established by the Commission's penalty policy is $250 minimum per violation that was set when the maximum fine was $1,000. The Commission has not adjusted the guideline since the fine was increased to up to $5,000 per day for any violation. The Basic Components include the following:

Component A: Finding of violation:	$250 per day/incident
Component B: Occurring in a Water Management Area (WMA)	$250 per day/incident
Component C: Repeat Violation	$250 per day/incident

Applicability to Violation:
The applicant was in violation of HRS §174C-71(3)(A) for placing a one-half horsepower submersible pump in Keanuiomano Stream without a SDWP (Component A). Keanuiomano

Stream is not in a Surface Water Management Area (Component B), and the applicant has no repeat violations (Component C).

Staff recommends the minimum basic fine component of $250 for one day violation of one incident.

Gravity Components: Six elements are outlined in the Commission's Penalty Policy: A) significant risk to resource; B) actual harm or damage to resource; C) multiple or repeat violations of code or regulations; D) evidence that violator should have known; E) refusal to correct violation; F) failure to meet deadlines set by the Commission. The gravity component can add an additional up to a cap of $1,000 per violation and initiate daily fines.

Applicability to Violation:
Components A and B: The Commission has no direct evidence in this case of risk or damage to Keanuiomano Stream.
Component C: The applicant has no multiple or repeat violations.
Component D: The applicant was unaware that a SDWP was required.
Component E: Not applicable.
Component F: Not applicable.

Staff recommends no fines for Gravity Components A-F.

Mitigative Components: Six mitigative elements are outlined in the Commission's Penalty Policy: A) insignificant risk to resource; B) attempt to remedy without notice; C) good faith effort to remedy violation once noticed; D) diligent and speedy effort to remedy the violation once noticed; E) self-reporting in a timely manner; F) emergency considerations.

Applicability to Violation:
Component A: The placement of a one-half horsepower submersible pump in Keanuiomano Stream does not appear to have created any risk to Keanuiomano Stream.
Component B: Not applicable.
Component C: The applicant showed good faith effort and applied for a SDWP when he was informed that permit was required.
Component D: Not applicable.
Component E: Not applicable.
Component F: Not applicable.

Staff recommends a $25 reduction in fine for each Mitigative Component, A and C, for a total reduction in fines of $50.

Duration Component: The duration calculation is determined according to the circumstances surrounding each type of violation. When compliance is speedy and the applicant is not a repeat violator, the policy is to limit the duration exposure to fine to a single day minimum.

Staff recommends that the duration of exposure be limited to a single day minimum.

Summary of Recommended Fines:

Basic Component:	$250
Gravity Component:	$0
Mitigative Component:	($50)
Total Fine:	$200

Exhibit 7 is a summary of the penalty calculations for this case.

RECOMMENDATION:
That the Commission:

Stream Diversion Works Permit

1. Find the applicant in violation of Hawaii Revised Statutes §174C-71(3)(A) for installing a one-half horsepower submersible pump in Keanuiomano Stream without a Stream Diversion Works Permit (SDWP) from the Commission.
2. Impose a fine on the applicant of $200.00 following the Commission's Civil Penalty Guideline (G01-01) based on a first time, non-repeat violation for one incident with mitigative components.
3. Issue a written warning to the applicant indicating any future violations involving the alteration of stream channels or stream diversions without the necessary stream channel alteration permit or stream diversion works permit may be considered repeat violations with fines up to $5,000 for each day of violation.
4. Approve an After-the Fact Stream Diversion Works Permit for a submersible pump in Keanuiomano Stream, Kamuela, Hawaii, TMK: (3) 6-2-011:052. The permit shall be subject to the Commission's Standard Conditions in Exhibit 8 (Standard Conditions 4 to 8 do not apply to this permit).

Petition to Amend the Interim Instream Flow Standard

5. Approve the applicant's petition to amend the interim instream flow standard for a stream diversion at Keanuiomano Stream, Kamuela, Hawaii, TMK: (3) 6-2-011:052.
6. Amend the Interim Instream Flow Standard for all streams in Hawaii, as adopted by the Commission on June 15, 1988, to include a new interim instream flow standard for Keanuiomano Stream, Kamuela, Hawaii, TMK: (3) 6-2-011:052.
7. Allow the applicant to divert up to 15,000 gallons per day, at the pumping rate of 1,000 gallons per hour, for irrigation purposes, from the existing location of the intake. The amendment of the interim instream flow standard shall be subject to the conditions for interim instream flow standard amendments in Exhibit 9.

Respectfully submitted,

Ken C. Kawahara

KEN C. KAWAHARA, P.E.
Deputy Director

Exhibits:
1. Location Maps 1a and 1b
2. TMK Map
3. Topographic Survey
4. Aerial Photo of Site
5. USGS Surface Water Monthly Statistics
6. Maximum Peak Discharge
7. Summary of Penalty Calculation
8. Standard Stream Diversion Works Permit Conditions
9. Interim Instream Flow Standard Amendment Conditions

APPROVED FOR SUBMITTAL:

LAURA H. THIELEN
Chairperson

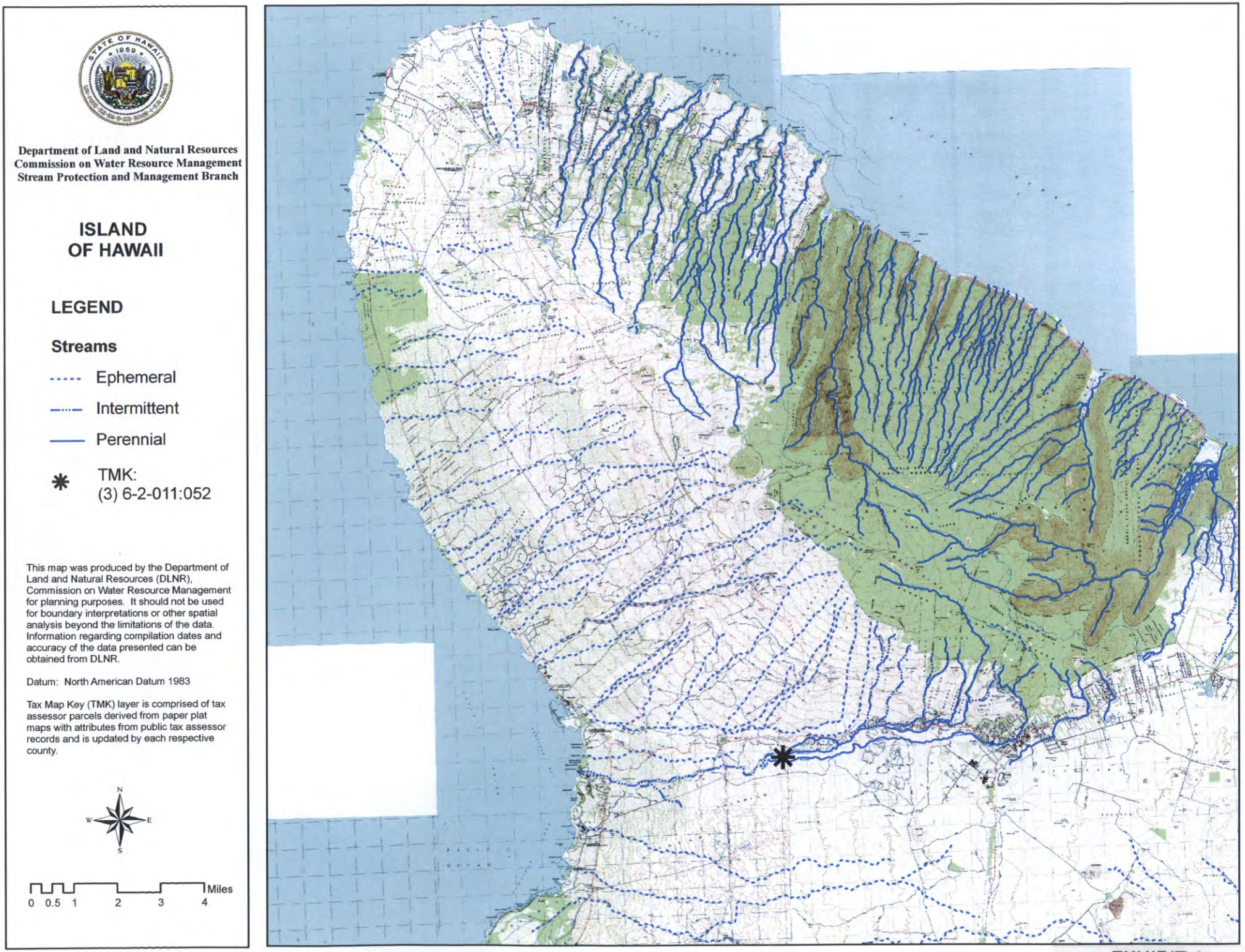
Department of Land and Natural Resources
Commission on Water Resource Management
Stream Protection and Management Branch
ISLAND
OF HAWAII
LEGEND
Streams
Ephemeral
Intermittent
Perennial
TMK:
(3) 6-2-011:052
This map was produced by the Department of Land and Natural Resources (DLNR), Commission on Water Resource Management for planning purposes. It should not be used for boundary interpretations or other spatial analysis beyond the limitations of the data. Information regarding compilation dates and accuracy of the data presented can be obtained from DLNR.
Datum: North American Datum 1983
Tax Map Key (TMK) layer is comprised of tax assessor parcels derived from paper plat maps with attributes from public tax assessor records and is updated by each respective county.
N
W
E
S
0 0.5 1 2 3 4 Miles

EXHIBIT 1a

Department of Land and Natural Resources
Commission on Water Resource Management
Stream Protection and Management Branch

ISLAND OF HAWAII

Streams

- Ephemeral
- Intermittent
- Perennial

Diversions

- Diversions
- TMK: (3) 6-2-011:052

This map was produced by the Department of Land and Natural Resources (DLNR), Commission on Water Resource Management for planning purposes. It should not be used for boundary interpretations or other spatial analysis beyond the limitations of the data. Information regarding compilation dates and accuracy of the data presented can be obtained from DLNR.

Datum: North American Datum 1983

Tax Map Key (TMK) layer is comprised of tax assessor parcels derived from paper plat maps with attributes from public tax assessor records and is updated by each respective county.

N W E S

0 0.0350.07 0.14 0.21 0.28 Miles

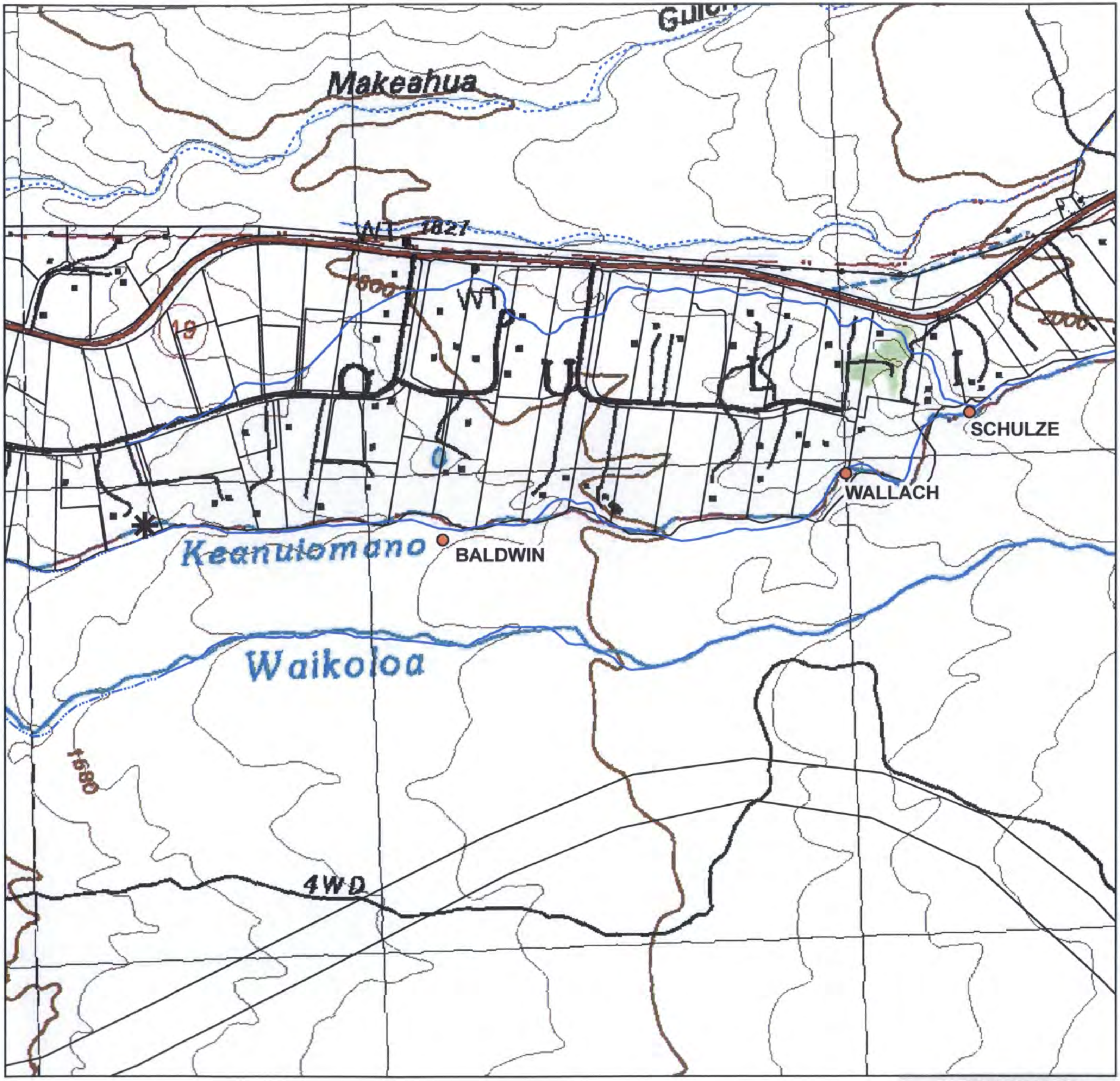

EXHIBIT 1b

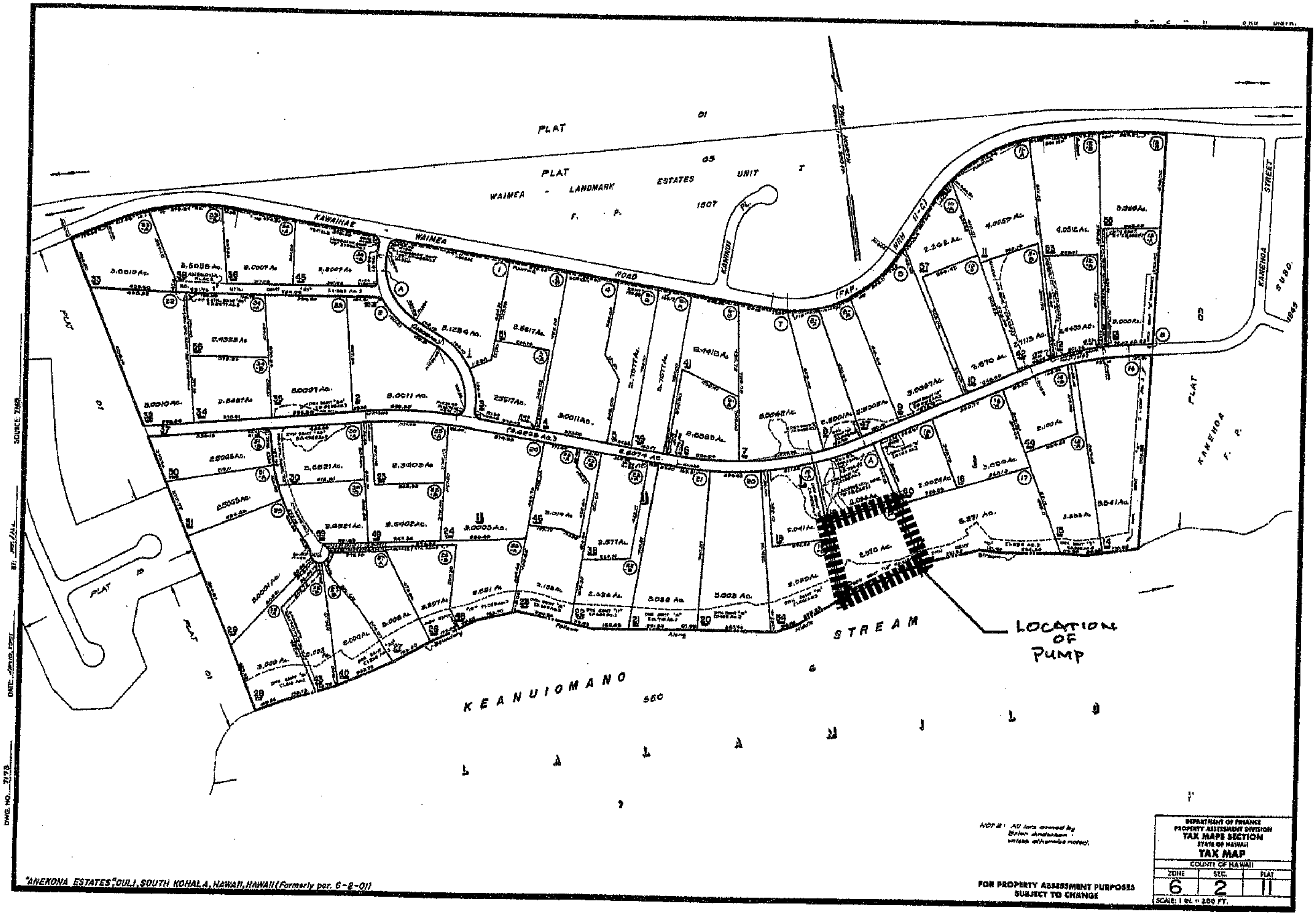
PLAT 01
PLAT 05
WAIMEA - LANDMARK ESTATES UNIT I
F. P. 1807
KAWAIHAE - WAIMEA ROAD
KANEHOA STREET
KANEHOA F. P.
SUBD. 1845
STREAM
LOCATION OF PUMP
KEANUIOMANO SEC
KALALA
NOTE: All lots owned by Brian Anderson unless otherwise noted.
"ANEKONA ESTATES", OULI, SOUTH KOHALA, HAWAII, HAWAII (Formerly por. 6-2-01)
FOR PROPERTY ASSESSMENT PURPOSES SUBJECT TO CHANGE
DEPARTMENT OF FINANCE
PROPERTY ASSESSMENT DIVISION
TAX MAPS SECTION
STATE OF HAWAII
TAX MAP
COUNTY OF HAWAII
ZONE 6
SEC. 2
PLAT 11
SCALE: 1 in. = 200 FT.

EXHIBIT 2


KANEHOA STREET
Lot 18
5.008 Ac.
Lot 19
Lot 17
STREAM
FLOW
KEANUIOMANO
POINT OF
PUMP LOCATION
Topographic Survey Worksheet
of a portion of Lot 18
of "Anekona Estates"
T.M.K. : 6-2-11 : parcel 18
at Waiuwa, South Kohala, Hawaii
Engineers Surveyors Hawaii, Inc.
Civil Engineers — Land Surveyors — Planners

EXHIBIT 3


N
© 2008 Tele Atlas
Image © 2008 DigitalGlobe
©2007 Google™
Pointer 20°01'09.59" N 155°44'54.39" W elev 1657 ft
Streaming 100%
Eye alt 2556 ft

EXHIBIT 4

National Water Information System: Web Interface

USGS Water Resources

Data Category: Surface Water | Geographic Area: Hawaii | GO

News: Recent changes

USGS Surface-Water Monthly Statistics for Hawaii

Water Data Reports for the Nation, Water Year 2007: WRD Search || ADR Mapper

The statistics generated from this site are based on approved daily-mean data and may not match those published by the USGS in official publications. The user is responsible for assessment and use of statistics from this site. For more details on why the statistics may not match, click here.

USGS 16756500 Keanuiomano Stream near Kamuela, HI

Available data for this site Time-series: Monthly statistics GO

Hawaii County, Hawaii
Hydrologic Unit Code 20010000
Latitude 20°01'36.8", Longitude 155°41'55.0" NAD83
Drainage area 4.30 square miles
Gage datum 2,410 feet above sea level HILOCAL

Output formats
HTML table of all data
Tab-separated data
Reselect output format

00060, Discharge, cubic feet per second,

YEAR	Monthly mean in cfs (Calculation Period: 1963-11-01 -> 1972-09-30)											
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
1963											12.4	0.331
1964	4.53	30.1	6.21	5.96	35.6	4.60	13.4	8.77	7.62	12.3	14.9	5.15
1965	4.15	3.24	6.00	5.75	0.807	2.69	2.48	1.05	0.000	1.61	7.74	17.0
1966	6.62	5.70	3.06	1.06	0.704	11.4	14.1	21.3	7.18	5.53	1.22	20.1
1967	40.5	5.67	9.20	9.54	1.56	1.03	18.0	4.94	0.510	1.06	19.9	10.8
1968	5.92	12.9	22.1	43.0	9.29	3.19	2.68	2.24	0.840	0.176	0.357	12.8
1969	8.13	32.4	17.6	43.0	1.95	1.24	11.6	22.8	6.84	0.758	1.07	7.45
1970	10.9	0.247	6.41	38.6	21.3	9.66	24.2	31.8	4.92	3.76	13.5	44.3
1971	19.9	0.651	13.3	8.79	0.795	3.12	12.5	0.571	0.154	0.471	6.33	7.47
1972	1.58	5.35	9.17	25.9	0.800	1.65	8.88	20.9	2.70			
Mean of monthly Discharge	11	11	10	20	8.1	4.3	12	13	3.4	3.2	8.6	14

** No Incomplete data have been used for statistical calculation

USGS
science for a changing world

Water-Data Report 2007

16756500 Keanuiomano Stream near Kamuela, HI

LOCATION.--Lat 20°01'36.8", long 155°41'55.0" referenced to North American Datum of 1983, Hawaii County, HI, Hydrologic Unit 20010000, (Kamuela quadrangle, 1981, 1:24000), on left bank 150 ft upstream from the junction of State Hwys 19 and 250 at Waiaka and 2.0 mi west of Kamuela (Waimea) from the junction of State Hwys 19 and 190.

DRAINAGE AREA.--4.30 mi^2.

SURFACE-WATER RECORDS

PERIOD OF RECORD.--Operated as a continuous surface water gage from 1964 to 1972,and a crest stage gage from 1973 to current year.

REVISED RECORDS.--WDR HI-98-1: 1964, 1975, 1978, 1991-96(M).

GAGE.--Crest-stage gage. Altitude of gage is 2,420 ft from topographic map.

REMARKS.--As the number of streams on which streamflow information is likely to be desired far exceeds the number of stream-gaging stations feasible to operate at one time, the U.S. Geological Survey collects limited streamflow data at sites other than stream-gaging stations. When limited streamflow data are collected on a systematic basis over a period of years for use in hydrologic analyses, the site at which the data are collected is called a partial-record station. Data collected at these partial-record stations are usable in low- or flood-flow analyses, depending on the type of data collected.

Prior to 1973, crest-stage partial-record station records for the State of Hawaii were published in an annual progress report entitled An Investigation of Floods in Hawaii. The following table contains the annual maximum discharge for this station. A crest-stage station is a device which will register the peak stage occurring between inspections of the gage. A stage-discharge relation for each gage is developed from discharge measurements made by indirect measurements of peak flow or by current meter. The date of the maximum discharge is not always certain but is usually determined by comparison with nearby continuous-record stations, weather records, or local inquiry. Only the maximum discharge for the current year is given. Information on some lower floods may have been obtained but is not published here. The years given in the period of record represent water years for which the annual maximum has been obtained.

EXTREMES FOR PERIOD OF RECORD.--Maximum discharge, 3,540 ft^3/s; gage height, 10.02 ft., April 20, 1968.

MAXIMUM PEAK DISCHARGE
WATER YEAR OCTOBER 2006 TO SEPTEMBER 2007

Date	Discharge, in ft^3/s	Gage height, in ft
Feb 1, 2007	935	7.00

ADMINISTRATIVE AND CIVIL PENALTY GUIDELINE
SDWP.1904.6

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q
		DAILY FINES						DURATION CALCULATION								
Item No.	Description	Finding of violation (minimum $250)	Occurring in SWMA (minimum $250)	Repeat violation (minimum $250)	Gravity component	Mitigative component	TOTAL DAILY FINES	Start date	End date	No. of days	Compliance within 45 days (Yes/No)	Total duration of violation	Alternate settlement (Yes/No)	Subtotal fine for one incident	No. of incidents	Subtotal fines
							C+D+E+F+G			J-I				H*M		O*P
1	SDWP.1904.6	$250	$0	$0	$0	-$50	$200	Not appl.	Not appl.	Not appl.	Not appl.	1	No	$200	1	$200
TOTAL FINES																$200

NOTES

A Individual violation item and corresponding number.

B Description - description of the violation, see submittal text for specific rules violated.

C Finding of violation (min. $250) - where there is a violation, there is a minimum daily fine of $250.

D Occurring in SWMA (min. $250) - When the violation is in a designated Surface Water Management Area (SWMA), there is a minimum additional daily fine of $250.

E Repeat violation (min. $250) - When the violator has committed violations in the past separately from the item number, there is a minimum additional daily fine of $250.

F Gravity component - allows for the increase of the daily fine, includes: significant risk of, or actual damage or harm to the water resources or the environment, multiple or repeat violations of the code or regulations, evidence that the violator should have known about the violation, refusal to correct the violation once noticed, and failure to meet deadlines as set by the Commission or its staff.

G Mitigative component - allows for the decrease of the daily fine, includes: insignificant impact on the resource, attempt to remedy the violation without notice, good faith effort to remedy violation once noticed, self reporting in a timely manner, diligent and speedy effort to remedy the violation once noticed, and emergency considerations.

H TOTAL DAILY FINES - the sum of the values in columns C through G.

I Start date - the date where calculation of daily fines begins (date of notice of violation, or permit approval, or permit fully signed, or violation occurred, or CWRM order).

J End date - the date of the end of the violation or latest CWRM meeting or completed permit application.

K No. of days - calculated between start and end dates.

L Compliance within 45 days (Yes/No) - if the applicant complies with the Commission staff's notice of violation requirements within 45 days.

M Total duration of violation - if there was compliance with staff notice of violation within 45 days, the duration shall be one (1) day. If there was no compliance with staff notice of violation within 45 days, the duration shall be the total days of the violation.

N Alternate settlement (Yes/No) an alternate settlement in lieu of the daily fine was recommended. See submittal for description.

O Subtotal fine for one incident - per incident fine.

P No. of incidents - of similar violations that occurred for this investigation.

Q Subtotal fines - the subtotal of fines, calculated by multiplying (per incident fine) * (no. of incidents).

EXHIBIT 7

STANDARD STREAM DIVERSION WORKS PERMIT CONDITIONS
(Revised 9/19/07)

1. The permit application and staff submittal approved by the Commission at its meeting on July 16, 2008, shall be incorporated herein by reference.

2. The applicant shall comply with all other applicable statutes, ordinances, and regulations of the Federal, State and county governments.

3. The applicant, his successors, assigns, officers, employees, contractors, agents, and representatives, shall indemnify, defend, and hold the State of Hawaii harmless from and against any claim or demand for loss, liability, or damage including claims for property damage, personal injury, or death arising out of any act or omission of the applicant or his successors, assigns, officers, employees, contractors, and agents under this permit or related to the granting of this permit.

4 The applicant shall notify the Commission, by letter, of the actual dates of project initiation and completion. The applicant shall submit a set of as-built plans and photos of the completed work to the Commission upon completion of this project. This permit may be revoked if work is not started within six (6) months after the date of approval or if work is suspended or abandoned for six (6) months, unless otherwise specified. The proposed work under this stream channel alteration permit shall be completed within two (2) years from the date of permit approval, unless otherwise specified. The permit may be extended by the Commission upon showing of good cause and good-faith performance. A request to extend the permit shall be submitted to the Commission no later than three (3) months prior to the date the permit expires. If the commencement or completion date is not met, the Commission may revoke the permit after giving the permittee notice of the proposed action and an opportunity to be heard.

5. Before proceeding with any work authorized by the Commission, the applicant shall submit one set of construction plans and specifications to determine consistency with the conditions of the permit and the declarations set forth in the permit application.

6. The applicant shall develop site-specific, construction best management practices (BMPs) that are designed, implemented, operated, and maintained by the applicant and its contractor to properly isolate and confine construction activities and to contain and prevent any potential pollutant(s) discharges from adversely impacting state waters. BMPs shall control erosion and dust during construction and schedule construction activities during periods of low stream flow.

7. The applicant shall protect and preserve the natural character of the stream bank and stream bed to the greatest extent possible. The applicant shall plant or cover lands denuded of vegetation as quickly as possible to prevent erosion and use native plant species common to riparian environments to improve the habitat quality of the stream environment.

8. In the event that subsurface cultural remains such as artifacts, burials or deposits of shells or charcoal are encountered during excavation work, the applicant shall stop work in the area of the find and contact the Department's Historic Preservation Division immediately. Work may commence only after written concurrence by the State Historic Preservation Division.

EXHIBIT 8

INTERIM INSTREAM FLOW STANDARD
AMENDMENT CONDITIONS

The petitioner is hereby granted an amendment to the interim instream flow standard subject to the following conditions:

1. The petitioner acknowledges that the use of stream waters for its project shall be subject to the rights and interests of others, as may be determined by Hawaii Law including but not limited to the rights established in Section 221 of the Hawaiian Homes Commission Act, and Hawaii Revised Statutes §174C-101.

2. The Commission reserves the right to establish, in the future, permanent instream flow standards that may or may not supersede the interim instream flow standard amended by the Commission for this project.

3. The surface water use here must not interfere with interim or permanent instream flow standards. If it does, then:

   a. A separate water use permit for surface water must be obtained in the case an area is also designated as a surface water management area;

   b. The interim or permanent instream flow standard, as applicable, must be amended.

4. The Interim Instream Flow Standard petition and submittal, as may be amended, approved by the Commission at its July 16, 2008, meeting are incorporated into this permit by reference.

5. The permittee shall work with the Mauna Kea Soil and Water Conservation District to determine the exact geographical location of the one-half horsepower submersible pump in Keanuiomano Stream and provide the latitude and longitude coordinates of the pump to the Commission.

6. The use authorized by law and by this amendment does not constitute ownership rights.

7. The permittee shall request modification of the amendment as necessary to comply with all applicable laws, rules, and ordinances, which will affect the permittee's water use.

8. This stream channel alteration permit shall be subject to the Commission's establishment of instream standards and policies relating to the Stream Protection and Management (SPAM) program, as well as legislative mandates to protect stream resources.

9. The petitioner understands that any violation of any of the above conditions or any provisions of HRS §174C or HAR §13-168, 169, 171 may result in the suspension or revocation of this petition or fines.